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Federal Communications Commission
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

DISPATCHED BY

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Dear Mr. Miller:

This is in response to the petition for rule making and supplement you filed on behalf of Charles M. Anderson, permittee of an unbuilt station (call letters unassigned) for Channel 264A, Beaver Dam, Kentucky, proposing the substitution of Channel 264C3 for Channel 264A at Beaver Dam, and the reallocation of Channel 264C3 from Beaver Dam to Brownsville, Kentucky. You also request that the station's construction permit be modified to specify operation on Channel 264C3 at Brownsville, Kentucky, as the new community of license.

Pursuant to Section 1.420(i) of the Commission's Rules, the reallocation of channels from one community to another and the concomitant modification of a station's authorization without affording other interested parties an opportunity to file competing expressions of interest is permissible only upon finding that the modification will result in a preferential arrangement of allotments. See Modification of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, ("Change of Community R&O," 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990) ("Change of Community MO&O"). A threshold criterion for acceptability is that the requested change in community will not result in the reallocation of the only existing broadcast service from the present community.

In support of the proposal, you contend that the reallocation and upgrade would result in a preferential arrangement of allotments because it would provide a first local aural transmission service to Brownsville (population 897). You further contend that the upgrade would result in a gain of service to 103,729 people, and a loss of service to 19,696 people who already have at least five or more reception services, resulting in a net gain of 84,033. You assert that the reallocation would not deprive Beaver Dam of its sole local aural transmission service because of the "reciprocal service doctrine," and because the station is unbuilt.

We disagree with your contention that under the "reciprocal service doctrine," that Stations WLLS(AM) and WLLS-FM licensed to Hartford, Kentucky, should be considered as local transmission services for Beaver Dam. These stations cannot be treated as local transmission services for Beaver Dam because the Commission repealed the "reciprocal service doctrine" in 1985. See Public Service Broadcasting of West Jordan, Inc., 61 R.R. 2d 384, 385 (1985). Although we are concerned with the possible removal of a sole local potential service, we do agree that the reallocation of Channel 264A or Channel 264C3 to Brownsville would not result in the removal of Beaver Dam's sole local service because the station is unbuilt, and thus would not result in the removal of an "existing service."

However, in this case we do not believe that the public interest will be served by removing a community's sole local potential aural transmission service from a larger community in order to provide a smaller community with its first local aural transmission service. The reallocation must serve the Commission's FM allotment priorities and policies. The FM allotment priorities set forth in Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88 (1982), are: (1) first full-time aural service; (2) second full-time aural service; (3) first local service; and (4) other public interest matters. [Co-equal weight given to priorities (2) and (3)]. Since the proposed allotment would provide a first local service (priority 3) to either community, we must base our decision on other public interest benefits. Therefore, when comparing communities under priority (4), the more populous community is generally preferred. Accordingly, a first local service to the larger community of Beaver Dam (population 2,904) would prevail over the smaller community of Brownsville (population 897). See e.g., Northwe, et al., Missouri, 7 FCC Rcd 1449 (1992); West Liberty and Richwood, Ohio, 6 FCC Rcd 6084 (1991); Three Oaks and Bridgman, Michigan, 5 FCC Rcd 1004 (1990); and Obion and Tiptonville, Tennessee, 7 FCC Rcd 2644 (1992). We recognize there is also an upgrade proposed for Brownsville that would result in a net gain of 84,033 listeners. This net gain is considered to be secondary as opposed to primary service to the community of license. Finally, most of the gain area is well-served with five or more reception services, and only 1,208 people would receive a fifth reception service.

For the reasons stated above, we find that the petition for rule making filed on behalf of Charles M. Anderson is unacceptable for consideration.

Sincerely,

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Enclosures